BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on policies and practices for advanced metering, demand response, and dynamic pricing.	Rulemaking 02-06-001 (Filed June 6, 2002)

ASSIGNED COMMISSIONER'S RULING PROVIDING GUIDANCE TO FACILITATE AN AGENCY AGREEMENT BETWEEN THE UTILITIES AND DEPARTMENT OF WATER RESOURCES AND DIRECTING UTILITIES TO TAKE CERTAIN STEPS TO IMPLEMENT THE DEMAND RESERVE PARTNERSHIP

After reviewing the comments filed in response to the January 26, 2004 Administrative Law Judge's (ALJ) Ruling, it is my conclusion that guidance on several key issues will assist the utilities and the Department of Water Resources (DWR) in reaching an agency agreement that will allow full implementation of the California Consumer Power and Conservation Financing Authority (CPA) Demand Reserves Partnership (DRP).

1. Background of the Demand Reserves Partnership

The DRP was created in 2002. The foundation of the program is a five-year contract between the CPA and DWR signed as part of DWR's power purchase responsibilities when it was purchasing the net short position for the utilities. The contract functions much like the other power supply contracts signed by DWR on behalf of the utilities by providing power, where and when needed, but through reductions in demand, rather than generation.

Under the contract between DWR and the CPA, there are various supporting contracts. The CPA has contracts with several private third-party companies, called "aggregators." These contracts are all the same, and are called collectively, "Demand Reserves Provider Agreements." They specify the terms

and conditions of how the aggregators provide power to DWR when called under the terms of the contract. The terms of the Demand Reserves Provider contracts mirror the terms of the contract between DWR and the CPA. The Demand Reserves Providers have individual agreements with electricity customers (for example, businesses and stores) who provide the actual demand reduction.

As currently operated, the contracts provide that, when notified by DWR, customers who were consuming power in the normal course of business, reduce their load, and make the power they would have otherwise consumed available for the customers of the utilities. The actual notification goes from DWR to CPA (and its contractor APX,) to the aggregators and then to the actual customers. This notification is entirely electronic, with no significant delay in the notification process between DWR and customers. So far, the program has only been called by DWR for reliability and testing purposes.

While the program operates year-round, it is designed primarily to focus on the summer months when peak reduction is most important. In Summer 2002, the program provided 15 megawatts (MW) of capacity; by Summer 2003, the program provided 249 MWs. The contract between DWR and the CPA calls for three more summers of operation (2004, 2005 and 2006).

2. Exclusivity of Dispatch

It appears that in order for the DRP program to be fully implemented, the utilities and DWR must reach an Agency Agreement. Based on a review of the comments, the key issue that appears to be impeding progress on an Agency Agreement is exclusivity of dispatch. DWR has the right to dispatch DRP contracts for reliability and testing purposes, a right which it is not willing to give up. If the utilities take on dispatch responsibilities for these contracts, the DRP contracts would enter into the utility portfolio of resources to be dispatched on a

least cost, i.e., economic, basis. Functionally, when Agency Agreements are signed between DWR and the utilities, the utilities will make the economic determination of the need for the DRP resources and call the program through CPA (and its contractor APX), a function now performed by DWR solely for reliability and testing purposes. The utilities are concerned that, without exclusive dispatch rights, DWR might exercise its dispatch rights for reliability reasons at a time period that would result in the DRP resources being dispatched in a less than least cost manner.

Because the utilities are responsible for dispatching resources in a least cost manner, they argue that they should not have to accept dispatch instructions from another entity who does not share that responsibility. The fundamental issue here is that the utilities do not want to be penalized for violating least cost dispatch requirements if DWR instructs them to dispatch DRP resources for reliability or testing purposes. This concern appears to stem from the language at page 10 in D.03-06-032 that states: "Utilities should dispatch the tariffs and programs when they are cost-effective relative to the marginal generation costs avoidable through demand response as the utilities make short-run commitments." D.03-06-032 also required that the utilities file Implementation Plans (as advice letters) to ensure that the DRP resources are used when it is cost effective to do so. (See Ordering Paragraph 9.)

Until the DRP is dispatched on an economic basis, these resources are not operating as price responsive demand programs. If utilities intend to count DRP contracts toward meeting their price responsive demand goals, the program cannot be operated solely as a reliability program as is currently the case. In other words, the utilities should dispatch these resources on an economic basis, but at the same time, they should accept dispatch instructions from DWR for reliability and testing purposes. DWR's ability to direct that the DRP resources

be dispatched for testing purposes should be limited for each demand reserves provider to once per calendar year, and only in the event that the program has not already been called that calendar year. In return, the utilities will not be penalized for violating least cost dispatch requirements if DWR instructs them to dispatch the DRP resources for reliability or testing purposes.

I note that situations when system reliability is in question frequently correspond to times of high prices, thus when DWR dispatches DRP resources for reliability purposes, its interests will often be aligned with the utilities' least cost dispatch interests. I believe that with these clarifications, the substantive concerns of both the utilities and DWR should be resolved and allow them to complete their Agency Agreements.

3. Replacement Energy Costs

Another issue that seems of major concern to Pacific Gas and Electric Company (PG&E) is the responsibility to pay for replacement energy costs in the event of non-performance by DRP contracts. DWR has already agreed to pass on to utilities any reimbursement due to non-performance it receives from CPA. PG&E argues that it must have additional security than has already been contracted for between DWR and CPA. San Diego Gas & Electric Company (SDG&E) is satisfied that existing contracts between CPA and DWR and CPA and DRP providers provide sufficient protection for SDG&E for replacement energy costs.

In my opinion, this is a non-issue. Some risk of non-performance exists in every contract and cannot be eliminated. The contracts already include provisions that require demand reserves providers to cover replacement energy costs should non-performance occur. In terms of the scale of risk that we are discussing, if there are 300 MW under contract, and all 300 MW failed to perform for eight hours, and ISO prices were at the $250/MW cap, the total exposure

would be $600,000. This maximum exposure situation would occur only if every single provider failed to deliver, every MW under contract failed to perform, and all providers defaulted on all of the terms of their contracts. In addition, CPA holds security from each demand reserves provider to cover such performance defaults. The likelihood of the incident being repeated would be low since the CPA monitors effectiveness and can terminate a demand reserves provider's contract for such defaults.

4. Required Compliance Filing

The remainder of the topics called out in the January 26, 2004 ALJ Ruling do not appear to be impeding progress on the Agency Agreements between DWR and the utilities.[1] Thus, with this guidance, I direct the utilities to resume negotiations with DWR with the goal of finalizing Agency Agreements within 30 days.

The Agency Agreements should be filed as supplemental compliance advice letters to last year's July 7, 2003 advice letters, no later than 30 days after the date of this ruling. The supplemental advice letters will replace the original advice letters and should, in addition to containing the Agency Agreements, include an updated Implementation Plan to reflect changes as a result of the Agency Agreement. I am shortening the protest period for the compliance advice letters to 10 days after the advice letters are filed. Energy Division will review the Agency Agreements for compliance with this ruling and, assuming compliance is found, will approve the agreements and Implementation Plans without the need for further Commission action. In the event that the advice letters do not comply with this ruling, Energy Division will draft a resolution

[1] For example, PG&E's request for rapid termination rights should no longer be required given the guidance I have provided on dispatch issues.

including proposed language that will resolve the compliance problem for Commission adoption.

5. Other Issues

Several parties commented on additional topics that were not specifically called out in the January 26, 2004 ALJ Ruling and I take this opportunity to provide some direction to the utilities and parties on those matters. First, several parties raise concerns that the CPA's future is uncertain and thus it is inappropriate to enter into an Agency Agreement or market this program actively. I acknowledge that the future of the CPA is not entirely clear at this point, however, in my opinion, the DRP program will continue to exist whether the CPA or some other entity administers it. The CPA essentially serves a broker function under the program, which could easily be assumed by another agency should be the CPA be disbanded. Therefore, the utilities should be working diligently with the CPA to implement the full scale DRP program, including the hour ahead and ancillary services market that were contemplated in D.03-06-032, and be marketing the CPA DRP program to customers on an equal basis with other demand response programs offered by the utilities.

Second, several parties raised concerns over timeliness and reporting of meter data from utilities to the CPA (and its contractor APX) which ultimately affects the timeliness of performance validation and payments to providers and customers. Therefore, I direct the utilities to work with the CPA and its contractor APX to develop a common reporting format within 30 days and include a description of that format in the supplemental compliance advice letter described above. The utilities should then report the relevant data in the agreed upon format to the CPA (and its contractor APX) within 10 days after the close of each calendar month for all customer meters they read (both bundled and direct

access meters). The timely collection and reporting of data to the CPA should help resolve the issue of validating data raised by SCE and DWR.

Finally, D.03-06-032 makes clear that one of the benefits the Commission saw in the CPA DRP program was its availability to a broader set of customers than just utility customers, in particular, direct access customers. However, it appears that by their actions during times when the program has been called, at least one utility has refused to accept inter-scheduling coordinator trades from direct access customers who are participating in the DRP. Refusing to schedule these trades is illogical, given that these customers are being paid to make demand reductions available to the system. The result of such refusals is the double acquisition of resources. When it refuses to schedule these trades, the utility must acquire additional resources to serve its own load even though direct access customers who reduce their load under the DRP make the resources that were arranged to serve them available to the utility. Therefore, the utilities should accept inter-scheduling coordinator trades from direct access customers who are participating in the DRP program when the program is called. As I described above, in the event that the DRP program is called for reliability or testing purposes, which results in inter-scheduling coordinator trades from direct access customers who are participating in the DRP program, the utilities should not be penalized for violating least cost dispatch requirements when they accept these trades.

Therefore, **IT IS RULED** that:

1. Consistent with the guidance set forth herein, the utilities shall resume negotiations with Department of Water Resources to finalize and file Agency Agreements within 30 days.

2. The Agency Agreements shall be filed as part of the supplemental compliance advice letters described herein no later than 30 days after the date of this ruling.

3. The protest period for the supplemental advice letters is shortened to 10 days after the date the advice letters are filed.

4. Regardless of uncertainty over the future of the California Consumer Power and Conservation Financing Authority (CPA), the utilities shall work diligently with the CPA to implement the full scale Demand Reserves Partnership (DRP) program, including the hour ahead and ancillary services market that were contemplated in Decision 03-06-032, and market the CPA DRP program to customers on an equal basis with other demand response programs offered by the utilities.

5. The utilities shall work with CPA and its contractor APX to develop a common meter data reporting format within 30 days and include a description of the format in their supplemental compliance advice letters.

6. The utilities shall report the relevant meter data in the agreed upon format to CPA (and its contractor APX) within 10 days after the close of each calendar month for all customer meters they read (both bundled and direct access meters).

7. The utilities shall accept inter-scheduling coordinator trades from direct access customers who are participating in the DRP program when the program is called.

Dated April 1, 2004, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have this day, served electronically the parties who have provided e-mail addresses, and served by U.S. mail the parties who do not have e-mail addresses, a true copy of the original attached Assigned Commissioner's Ruling Providing Guidance to Facilitate an Agency Agreement Between the Utilities and Department of Water Resources and Directing Utilities to Take Certain Steps to Implement the Demand Reserve Partnership on all parties of record in this proceeding or their attorneys of record.

Dated March 30, 2004, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.